

COVID-19 and the Courts

Written Testimony to the House Judiciary and Civil Jurisprudence Committee
November 30, 2020

Texas saw its first diagnosed case of COVID-19 on March 4, 2020. In the weeks prior, the Texas Judiciary had begun preparing for the potential impact of the Coronavirus by participating in preparedness briefings with Governor Greg Abbott, emergency services, and health and human services staff starting on February 27. Based upon the information gathered at those briefings, the Texas Judiciary activated its response plan and began taking actions including preparing to hold court online. The Office of Court Administration (OCA) also began to issue regular COVID-19 Guidance to thousands across the state including judges, clerks, and court staff.

It's estimated that one-percent of Texas' population visits a courthouse in one of our 254 counties every weekday. That is roughly 325,000 Texans going in and out of courthouses daily. The Judiciary recognized that if it did not get safety precautions and procedures right, Texans would get sick and it would set our state back in fighting the virus.

Zoom Hearings

On March 13, hours after Governor Abbott issued a disaster declaration and public health emergency declaration for the state, the Supreme Court, joined by the Court of Criminal Appeals, used its emergency powers under Section 22.0035(b), Texas Government Code, to issue the First Emergency Order Regarding the COVID-19 State of Disaster. The order permitted all courts in all cases, without a participant's consent, to modify or suspend deadlines, allow or require remote participation by anyone involved in a hearing or proceeding (except jurors), conduct proceedings away from the court's usual location, and to extend statutes of limitations in civil cases.

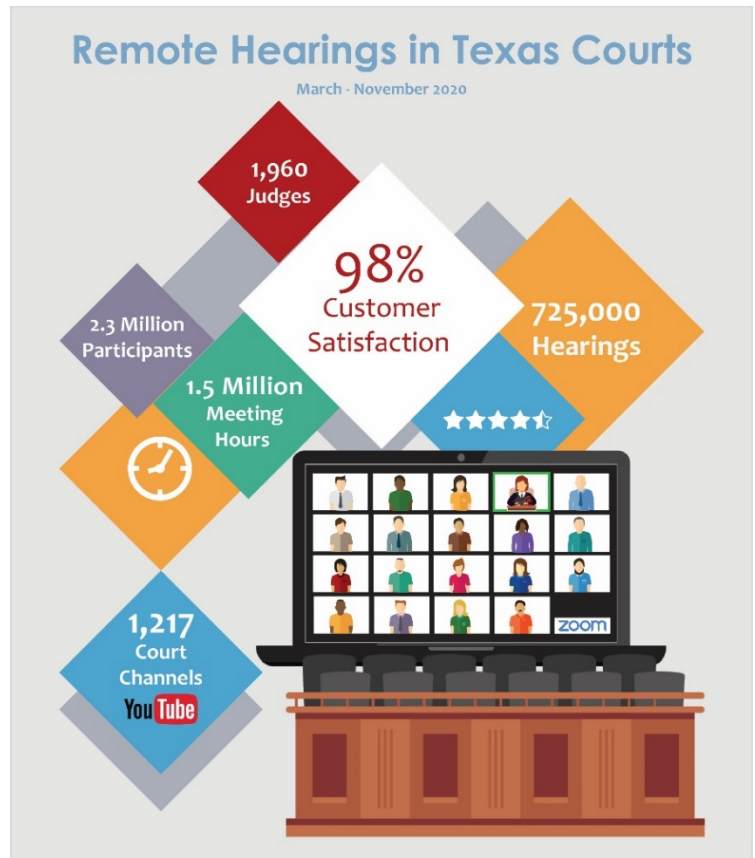
OCA considered several technology platforms that would enable judges to conduct court proceedings remotely. After testing several different options, OCA determined that Zoom would be the best fit for the Texas Judiciary. OCA secured more than 3,000 Zoom licenses for every judge in the state. Texas judges fully adapted to the technology holding an estimated 760,000 remote hearings in every case type and type of proceeding, including bench and jury trials, with 2.3 million participants, lasting more than 1.5 million hours during the eight-month period between March and November. To satisfy open court constitutional provisions, judges stream the proceedings online via YouTube. A listing of court YouTube channels can be found at <http://streams.txcourts.gov>.



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Nine months into the pandemic, the Texas Judiciary continues to lead the nation with its innovation and ability to adapt. Texas was the first state to have its nine-member Supreme Court host remote oral arguments, the first state to hold a virtual non-binding civil jury trial in May 2020, and it became the first state to hold a virtual criminal jury trial in August 2020.

Many judges have reported that they are seeing greater participation from litigants via Zoom due to the ease of using the platform and the fact that litigants can more efficiently attend court hearings by simply logging in to their computer or mobile device. Judges are also reporting cost savings from traveling to and from court and the same savings for litigants and attorneys. Access to interpreters has increased - OCA's Texas Court Remote Interpreter Service (TCRIS) reports that demand is up 60% from March-September 2020 over the same time period in 2019.



Emergency Orders

If the Governor declares a State of Disaster, the Supreme Court has broad authority to manage the judicial branch in times of emergency under Section 22.0035(b) of the Government Code. Throughout the pandemic, the Supreme Court has issued 29 Emergency Orders. Three remain in effect as of November 30. The orders can last up to 90 days and can be renewed by the Chief Justice of the Supreme Court. All Emergency Orders are on the Supreme Court's website <https://www.txcourts.gov/supreme/administrative-orders/2020/>.

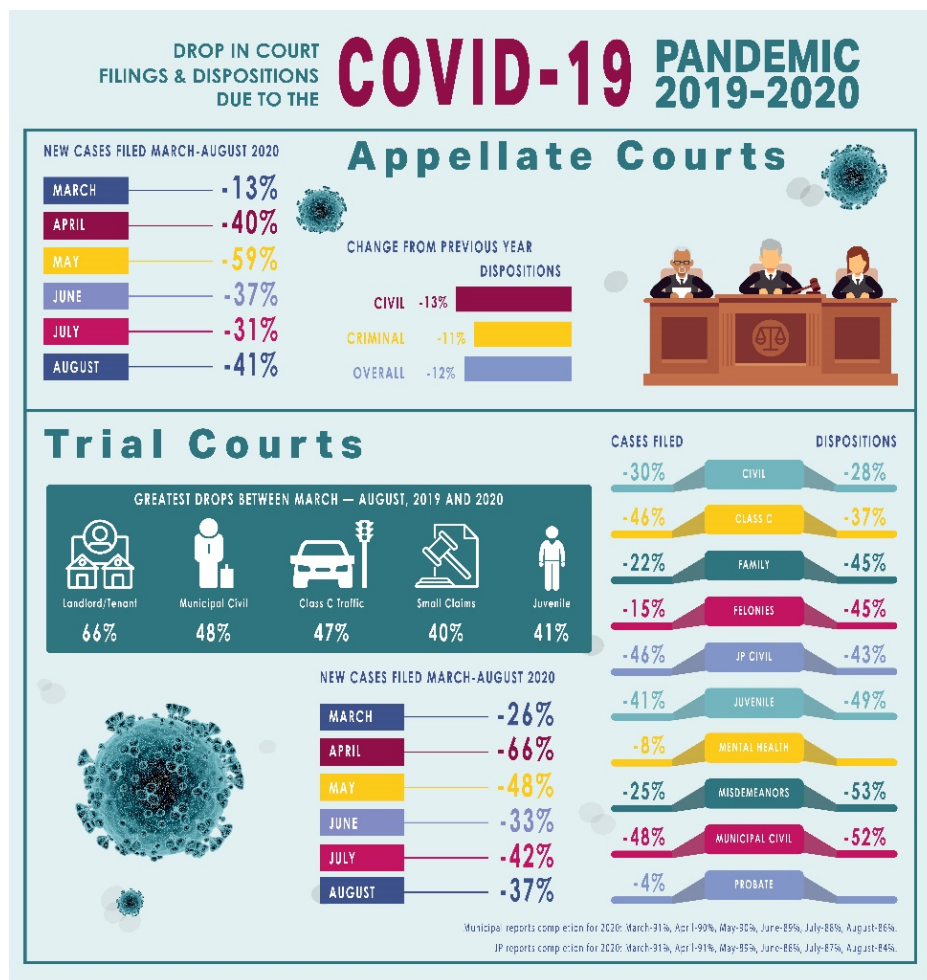


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Filings/Dispositions

Court filings took a significant hit during the pandemic with the biggest decline in filings coming in May 2020 for the Courts of Appeals with a 59% drop from May 2019 compared to May 2020. Trial courts saw the biggest decline in filings in April 2020 with a 66% drop in filings compared to the same time period in 2019. Case types seeing the biggest declines were landlord/tenant, civil-municipal, and Class C Misdemeanor traffic tickets.

Disposition rates were also down across the board and will lead to backlogs in resolving cases. While case filings are down in the present, long-term, we expect case filings to increase, especially at the appellate level. Historically, major economic hardships produce a flood of cases related to business disputes, employment litigation, consumer debts and foreclosures. In addition, due to the unique circumstances of COVID-19, the judiciary anticipates a rise in domestic violence/child abuse/sexual abuse cases, divorces and parental termination suits, as well as litigation over the numerous orders and directives issued by the executive branch, the Texas Supreme Court and associated state agencies.



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Jury Trials

Prior to the pandemic, Texas trial courts were holding an average of 186 jury trials per week. In its Seventeenth Emergency Order Regarding the COVID-19 State of Disaster issued on May 27, the Supreme Court prohibited courts from holding jury proceedings, including jury selection or a jury trial, prior to August 1 (the date was later extended to October 1.) In addition, the Court required OCA to coordinate with the Regional Presiding Judges and local administrative judges to assist trial courts in conducting a limited number of jury proceedings. In that May 27 order, the Court required consent from all parties to proceed with the limited jury trials, but the consent requirement was removed in the Eighteenth Emergency Order on June 29. The Court required OCA to submit a report to the Court outlining its observations regarding those jury proceedings. From June – September, OCA reviewed 97 requests to hold jury trials. Forty-five of those cases went to trial and received a verdict. OCA's full report - *Jury Trials During the COVID-19 Pandemic: Observations and Recommendations* is published here <https://txcourts.gov/media/1449660/jury-report-to-scotx-final.pdf>.

The Supreme Court's 29th Emergency Order issued on November 11 outlines the plans for trials and in person proceedings moving forward. The order:

- requires all courts to continue to use all reasonable efforts to conduct proceedings remotely
- requires courts to submit an operating plan prior to holding any in-person proceedings and a jury plan prior to holding jury trials
- prohibits Justice and Municipal Courts from holding in person jury trials through February 1
- requires motions/objections to in-person/virtual trials to be heard on the record and decided on in a timely manner
- requires waivers and consent from the defendant and prosecutor forailable criminal cases to be held virtually
- requires the judge to consult with the local health department prior to holding in-person trials to monitor COVID levels in the community.

OCA has assisted more than a dozen courts with holding virtual jury trials. OCA has found that the challenges with holding virtual jury trials are unrelated to the pandemic. Rather, the challenges are related to technology. With planning, practice and preparation, the courts that have conducted these

JURY TRIAL GUIDANCE – PLAN REQUIREMENTS

- Summons
- Locations
- Screening
- Face Coverings
- Social Distancing
- Alternates
- Courtroom arrangement
- Microphones
- Exhibits/evidence
- Vulnerable witnesses
- Food
- Cleaning



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types of trials have reported great success and jury engagement. To facilitate remote trials, OCA acquired iPads with cell service that could be secured and used for jurors who have a technology need and could not otherwise participate.

Teleworking and Technology

In early March, OCA anticipated an extended period facilitating remote work for our users due to the pandemic. In addition to doubling the bandwidth available to our Austin complex, OCA prepared and issued more than 70 loaner laptops for judicial branch agency employees, appellate court judges, and staff to use when their home computing equipment would not be able to support remote work. OCA has plans to keep employees teleworking at least through the end of 2020.



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